NATIONAL GRAIN AND FEED ASSOCIATION
Arbitration Decisions

November 6, 1978

Arbitration Case No. 1540

PLAINTIFF: General Mills, Inc.

DEFENDANT: Cook Industries, Inc.

The Arbitration Committee, after reviewing the voluminous briefs, rebuttals, surrebuttals and consideration of oral testimony presented at oral hearings in Washington, D.C. on January 12, 1978, found that the Plaintiff should be awarded damages to conclude and complete the contracts in question.

The basis for the dispute arose out of twelve (12) contracts of #1 hard amber durum sold by General Mills, Inc. to Cook Industries, Inc. Total amount of the twelve contracts was 2,651,281 bushels sold during months of August and September 1975 for shipment from May through July 20, 1976. A wash contract for 100,000 bushels was made June 3, 1976 reducing the total trade to 2,551,281 bushels.

All contracts specify official destination weights and prices ranged from $5.15 to $5.75 per bushel delivered Texas ports. Most of the shipments, truck and rail, were made to Koppel, Inc., Long Beach, California for export.

Shipments proceeded during the contract period. General Mills, Inc. applied cars to Cook Industries, Inc. via telephone, advising <u>estimated</u> origin weights. General Mills, Inc. was granted the privilege of reapplying cars, when graded officially, to fit various grade tolerances of the twelve contracts.

On July 20, 1976 a ten day contract extension by mutual agreement was made with the stipulation only #1 hard amber durum was to apply. On Friday afternoon, July 30, 1976, Cook Industries, Inc. advised General Mills, Inc. it would accept no applications not shipped by July 30, 1976.

Entwined throughout the shipping period were conversations between buyer and seller indicating their records of shipments did not agree.

The Plaintiff asked for damages on 38,391 bushels not delivered on the total contracts claiming the Defendant refused to accept; failed to provide timely unload data; and that Defendant gave Plaintiff erroneous information regarding status of Plaintiff's performance.

Plaintiff also asked Defendant to pay the premium cost on bushels bought to satisfy an estimated shortage as well as interest on above claim.

The Arbitration Panel clearly found that it is the seller's responsibility and to his best interests to keep accurate records of his contract applications. Even with large size contracts, the final unloading weights were less than .39% different from estimated or billed weights or 8,609.13 bushels.

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Though Plaintiff referenced National Grain and Feed Association's Rules 10, 11 and 22C, in Panel's opinion none of these Rules really affected or were pertinent to the dispute. Testimony indicated no discussion of Trade Rules were made by either party until well after contract deadlines had passed.

Both parties made reference to a unique market condition, but evidence clearly showed poor supervision of the trade and accompanying logistics. Execution for the most part was handled by clerks and secretaries and not merchandisers and management. Both of these large companies should have been experienced in this area.

It was in the best interests of General Mills, Inc. to fully ship all the contracts because the durum market had substantially declined and it was in Cook Industries, Inc.'s best interest not to take deliveries after contract period as export durum programs were finished.

<u>Summary</u>

The short fall was the result of poor and insufficient applications; i.e., not considering cars rejected account grade failure, trucks misapplied and phantom cars (cars reported twice but shipped once). These deficiencies were primarily caused by the Plaintiff obviating part of his claim.

<u>Conclusion and Awards</u>

The Plaintiff is entitled to an award on that portion of his shipment that involves applicable bushels and the corresponding difference between advised B/L weights and destination official weights on rail portion finally settled; the weight difference was .39% or a quantity of 8,609.13 bushels.

The Arbitration Committee believes that the following is an equitable solution to the pricing difference mechanism necessary to determine dollar amount of award.

That, Plaintiff (General Mills, Inc.) be awarded the difference of 8,609.13 bushels at market differential and contract price on July 30, 1976.

1. Weighted average on contract balances and individual contract prices

1. Weighted average on contract balances and individual contract prices		@$5.30 3/4
Market FOB Long Beach, California July 30, 1976	@$3.75	
Plus average freight differential from Long Beach to Texas Gulf $60\frac{1}{2}$ ¢ cwt.	.36 1/2	4.11 1/2
		$1.27 1/4

8,609.13 bushels x $1.27\frac{1}{4}$ = 10,955.12

2. Interest at 6% from date of last settlement, October 25, 1976, to the dates the litigants are advised of the decision.

/s/ Ronald E. Pratt, Chairman
The Early & Daniel Company, Inc.

/s/ Charles H. Miller
Peavey Company

/s/ Edmund P. Karam
Continental Grain Company

NATIONAL GRAIN AND FEED ASSOCIATION

Arbitration Decisions

Decision of Arbitration Appeals Committee-Arbitration Case No. 1540

Plaintiff: General Mills, Inc. Defendant: Cook Industries, Inc.

The Arbitration Appeals Committee individually and collectively considered the case. The Committee changed the award for the following reasons:

1. The actual underfill was 38,391 bushels.
2. Contracts cannot be cancelled. They must be settled at market value (or actual buy-in) or fulfilled.
3. Rule 10 does apply in this arbitration.
4. Rule 11 does not apply because the contracts were written for a specific shipping date, not a specific delivery date.
5. Rule 22C (1975/76 directory) does apply in this arbitration because if it had been adhered to the underfill might have been different.
6. Contracts were no longer open after July 30 because of Cook's wire refusing shipments after that date. Therefore, contracts should have been settled basis Fair Market Value July 30/31. As stated above, contracts cannot be cancelled without fair market value (or actual buy-in) being involved.
7. Underfill or overfill could not be ascertained until the last car applied on the contract could be unloaded.

Therefore, the Arbitration Appeals Committee awards the Plaintiff as follows:

Weighted average contract balances and individual contract prices:		5.30 3/4
Market FOB Long Beach, Cal. July 30/31:	3.75	
Plus average freight differential Long Beach/Texas Gulf:	.36 1/2	
	4.11 1/2	4.11 1/2
Market Difference:		1.19 1/4

38,391 bushels @ 1.19 1/4 = $45,781.27

Plus interest at 6% from July 31, 1976 to actual payment of award.

Unanimous:

/s/ J. Donnelly, Chairman
R.F. Cunningham & Co., Inc.
Melville, New York

/s/ Charles H. Holmquist
Holmquist Elevator Co.
Omaha, Nebraska

/s/ Bruce O. Cottier
Bartlett & Co.
Kansas City, Missouri

/s/ Royce Ramsland
Quaker Oats Co.
Chicago, Illinois

/s/ W.C. Theis
Simonds-Shields-Theis Grain Co.
Kansas City, Missouri